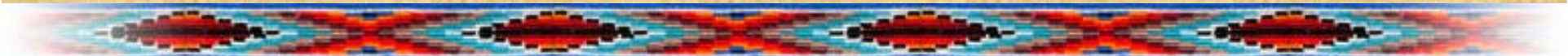


# Shoshone-Bannock Tribes

- Largest land-based tribe in Idaho with a 545,000 acre reservation
- Reservation reserved by the Fort Bridger Treaty of 1868
- 97% of Reservation held in trust or Tribally owned lands
- 120,000 acres is cultivated and 245,000 acres is grazing units
- Currently, the majority of Tribal government revenue is derived from agriculture income; the ROWs impact the efficiency of tribal farming practices
- Approximately 4,800 members



# Rights of Way Across Reservation

- The earliest rights-of-way across Reservation involved railroads that encroached and trespassed
- United States granted railroad companies access under federal acts and subsequently through the taking of Indian lands under two cession agreements
- Result was a 1.8 million acre treaty guaranteed Reservation being reduced to 545,000 acres
- Today, there are about 27 energy related rights-of-way including natural gas pipelines, power transmission lines, and a fuel line

# Historically, the BIA Grossly Undervalued ROWs

- Companies willingly entered the Reservation reaping economic benefit for over 100 years
- BIA negotiated and granted companies rows with limited input from Tribes and allottees. There was a BIA practice of not obtaining full consent from landowners
- BIA has failed to follow federal regulations to the detriment of the Tribes and allottees, e.g. BIA has permitted companies to increase pipeline sizes, new location of pipeline or type of transmission without requiring a new application; all ROWs were granted for 50 years despite regulations providing natural gas lines only granted for 20 years



# Undervalued Cont'd.

- Compensation was minimal compared to the acreage being acquired and length of time granted.
- An outrageous example in 1980, Idaho Power Company was granted by the BIA two perpetual ROWs across Tribal and allottee's lands.
- Common practice of energy companies early on was to construct all facilities on Reservation prior to seeking consent from the Tribes and allottees, and then paying after the fact

# Undervalued Cont'd

- In 1941, Utah Power Company was granted a 50 year 26 mile ROW for a mere \$5,000 or 50¢ per rod. ROW annual payment was to be reappraised after 5 years but it was never completed.
- In 1946, Idaho Power Company was granted a 50 year 10.5 ROW for a mere \$831.50 or 25¢ per rod
- In 1955, Northwest Pipeline was granted a 20 year ROW for a mere \$32,532 or \$7.85 per rod. In 1976, it renewed its ROW for \$38,068 or \$9.19 per rod.

# Undervalued Cont'd

- In 1963, Intermountain Gas Company was granted a 50 year 14.8 mile ROW for a mere \$5,830.20 or \$1.23 per rod.
- In 1963, Salt Lake Pipeline Company was granted a 50 year 9.6 mile ROW for a mere \$5,924.37 or \$1.93 per rod.



# ROWs Impact Tribal Sovereignty

- Tribal control of our lands is a fundamental attribute of tribal sovereignty
- Tribal consent for companies to enter and cross Reservation lands is equally an aspect of sovereignty
- The prohibition against condemning federal and state lands is no different than the prohibition for tribal lands
- United States has a trust obligation based on the Fort Bridger Treaty to protect and preserve the lands of the reservation

# Sovereignty Cont'd

- The federal policy of Self-Determination is the first policy to have any sustained, positive impact on reservation poverty
- Tribal self-determination has moved control of resources and lands into tribal hands
- Direct Tribal involvement in ROW negotiations enabled Tribes to obtain a fairer deal for the lands utilized by energy companies
- Tribes relied upon their technical experts and staff rather than the Bureau of Indian Affairs



# Sovereignty Cont'd

- As governments, tribes must be given the opportunity to negotiate their own deals with energy companies without interference by the federal government setting standards for compensation
- Beginning in the early 1990's the 50 year ROWs on the Reservation for the energy companies expired
- Tribes' renegotiation of ROWs was based upon the position/principle that Indian lands are unique
  - Land is an essential attribute for tribal existence rather than a marketable commodity
  - Tribal lands have cultural and sacred sites that require protection
  - Tribal land cannot be sold
  - Since Indian lands are not marketable the conventional market data approaches and appraisals do not apply

# Negotiations of ROWs

- The Tribes renegotiated ROWs based upon the opportunity cost doctrine
- These opportunity costs are the costs of the next best or most likely alternate route that detours around the reservation
- The ROWs agreements enabled the Tribes to create economic opportunities for the Tribal community including educational scholarships, energy assistance grants to poverty level Tribal members and providing for general governmental services

# Conclusion

- Shoshone-Bannock Tribes of the Fort Hall Reservation oppose any change in policy or law that undermines Tribal or landowners' consent for ROWs
- Current law requires that tribes be paid no less than fair market value for ROWs across their lands which we support
- We oppose the case study approach because it is limited in nature
- Each tribe and reservation is unique – all lands are not created equal. Therefore, the ROWs crossing reservation land must be negotiated based upon the unique land characteristics, purpose of ROW, and economics of the reservation. It must be recognized and respected that each sovereign tribe has the authority to establish their own standards for land valuation
- We oppose any actions by the federal government to condemn tribal lands. To even consider the condemnation of tribal lands is contrary to the Indian Tribal Energy Development and Self-Determination Act of 2005

